IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

CRL.A.No. 778 of 1999()

ST.2005/1997 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI DT.14.7.99.

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APPELLANT: COMPLAINANT

GODWIN PODUTHAS,
THATTANKERY HOUSE,
NJARAKKAL P.O., ERNAKULAM DISTRICT.

BY ADV. SRI.B.RAMACHANDRAN

RESPONDENTS: ACCUSED AND STATE
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1. M.N.SAJEEVAN, MOOKENCHERRY HOUSE,
CHURCH ROAD, NJARAKKAL P.O.,
ERNAKULAM DISTRICT.

2. STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI.
SRI.P.P.SUBHASH CHANDRAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.A.NO. 778 OF 1999-D

DATED THIS THE 6th July 2007

JUDGMENT

The appellant is the complainant in S.T.No.2005/1997 in the file of the Judicial First Class Magistrate-I, Kochi with respect to the offence under Section 138 of the Negotiable Instruments Act. The case of the complainant is that the accused borrowed Rs.30,000/- from the complainant promising to repay the same within one month and subsequently issued the impugned cheque dated 28-5-1997 with respect to the same amount which when presented got dishonoured for want of funds in the account of the accused. Demand notice sent was returned unclaimed.

2. The evidence adduced in the matter consisted of the testimony of PWs.1 to 3 and Exts.P1 to P5. Defence has examined as DWs.1 to 3 and Exts.D1 to D4.

3. The trial court after considering the evidence adduced in the matter has found that the procedural formalities envisaged by the statute, i.e. presentation of the cheque, issuance of notice

etc. were proved. But the version of the accused appeared more probable and hence acquitted the accused.

4. PW2 is the Bank Manager and PW3 is the postman who has testified as to the intimation given to the accused as to the notice . The case set up by the defence is that the accused was a subscriber in the chitty run by the Chitty Company in which the complainant is a partner and that the impugned cheque was issued towards security when the bid amount was given to him by the chitty company and that he bid the chit for Rs.13,200/- and towards the same he has remitted Rs.10,000/-. PW1 has admitted in the cross examination that the accused was a subscriber in the Mahalakshmi Financiers of which he is a partner. He has admitted that the accused had subscribed to the chitty for R.30,000/- and the accused had bid the chit for the amount less Rs.13600/- and he had remitted nine instalments at the rate of Rs.560/-. DW1 is the accused himself. He has testified in proof of the above defence. He has also produced Ext.D1 pass book wherein there is an entry with respect to the particular cheque as having been submitted to the chitty

company towards security drawn on the Service Co-Operative Bank, Njarakkal. A question put to DW1 in the cross examination as to who has made the particular entry. DW1 has testified that he was not aware of the same. He has stated in the re-examination that it is the staff of the chitty company that has made the entry in Ext.D1. DWs.2 and 3 who are independent witnesses have supported the version of DW1. According to DW2, the complainant is running the financial institution that run the chit. PW2 has stated that at the time when the amount was paid to the accused a blank cheque leaf signed by the accused as demanded and handed over the same. Ext.P1 cheque is the particular cheque leaf. He has sated that along with the accused DW3 was also present; and DW3 was the surety. He has stated that he was also a subscriber in the kuri. DW3 who was also a subscriber, has stated that he stood as surety to the accused. He has proved Ext.D4 notice allegedly sent by the complainant demanding the amount due from the accused as he was the surety. It is the version of DW1 and it can be seen from Exts. D2 and D3, the pass book with respect to the

account of the accused and the cheque book respectively that the impugned cheque leaf is the first cheque leave from Ext.D3 cheque book and that there is no further transaction in the account. According to DW1, the account was started only for furnishing the cheque leaf as security. It was in the above circumstances, the court below found that the accused has established a probable case and hence acquitted the accused.

I find that the finding of the court below is the logical conclusion from the evidence adduced and no interference is called for. The appeal is dismissed.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.A. 778 of 1999-D
JUDGMENT

6-7-2007